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EXECUTIVE SUMMARY

The record strongly supports Telocator's basic proposals for classifying existing and future mobile services. The comments reflect substantial agreement concerning the standards for classifying private and commercial mobile services, including application of the definitional elements of "for profit" and "publicly available" services. With only a few limited exceptions, the mobile services industry recommends defining "interconnected service" to include direct or indirect access to the public switched network and use of the "like services" test for determining functional equivalency.

There is likewise broad based agreement on classifying PCPs, RCCs, ESMRs and cellular as CMS. Moreover, the record supports creating narrowband and broadband categories of CMS in order to reflect differences in service characteristics and market conditions. Most importantly, all competing mobile service providers should face the same regulatory requirements and should enjoy both the flexibility to offer all technically compatible services and strong federally protected interconnection rights.

The record further supports forbearance from Title II regulation for CMS. Those comments which question the competitive status of the mobile services marketplace are

contradicted by the facts, which demonstrate that both existing and new mobile services are and will continue to be increasingly and robustly competitive at all levels. For similar reasons, state regulatory commission suggestions that would undermine Federal preemption of state regulation should be rejected, and the Commission should caution state regulatory authorities against attempts to circumvent preemption of rate regulation through indirect means.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Sections 3(n)) GN Docket No. 93-252
and 332 of the Communications Act)
)
Regulatory Treatment of)
Mobile Services)

REPLY COMMENTS OF TELOCATOR

Telocator, the Personal Communications Industry Association, hereby submits its reply to the comments filed in response to the Notice of Proposed Rulemaking issued in the above-captioned proceeding.¹ In its opening comments, Telocator asked the Commission to establish a forward-looking regulatory program for mobile services that ensures similar regulatory treatment of comparable service offerings, avoids imposing onerous and unnecessary federal or state regulatory burdens on mobile service providers, and secures for those providers the interconnection and other rights required for efficient and flexible use of the radio spectrum.² The record to date strongly confirms that adoption of these

¹ Implementation of Sections 3(n) and 332 of the Communications Act, FCC 93-454 (released Oct. 8, 1993) ("Notice"). Parties filing comments on the Notice are listed in Appendix A. Hereinafter, all parties listed in such appendix shall be referred to by the noted abbreviations. Unless otherwise noted, all comments are from the above captioned proceeding.

² Telocator Comments at 1-6.

proposals would affirmatively promote the delivery of diverse and improved services to the public.

**I. THE OPENING COMMENTS SUPPORT TELOCATOR'S
BASIC PROPOSALS FOR CLASSIFYING EXISTING
AND FUTURE MOBILE SERVICES**

**A. There Is Substantial Agreement Among the
Commenters Concerning the Standards for
Defining Private and Commercial Mobile Service**

Commenters overwhelmingly supported application of the definitional criteria for mobile services in a manner that facilitates similar treatment of comparable or "functionally equivalent" services. Specifically, the parties generally agree that "mobile service" should encompass all public services regulated under Part 22, mobile satellite service regulated under Part 25, private land mobile services currently regulated under Part 90, mobile marine and aviation services regulated under Parts 80 and 87, and personal radio services (other than IVDS) regulated under Part 95.³ As Telocator has demonstrated, this broad formulation is necessary to achieve Congress' goal of bringing all mobile offerings within a uniform regulatory framework,⁴ and no

³ See, e.g., AMTA Comments at 6-7; ARINC Comments at 3; Bell Atlantic Comments at 3; Motorola Comments at appendix; Waterway Comments at 3.

⁴ Telocator Comments at 6-8.

grounds were presented for materially expanding or contracting the FCC's list.

For profit service. Commenters likewise were in substantial agreement with the Commission's proposals concerning the elements of the commercial mobile service definition. Virtually all parties concurred in the view that the relevant measure of the "for-profit" criterion should be whether the service as a whole is offered on a commercial basis with the intent to earn a return.⁵ This definition would exclude government instrumentalities and businesses operating their own internal communications systems as well as truly non-profit systems,⁶ but would ensure that services

⁵ See, e.g., ARCH Comments at 4; CTIA Comments at 7-8; GTE Comments at 5; NARUC Comments at 13-17; NYDPS Comments at 4; NYNEX Comments at 4; Sprint Comments at 5; USTA Comments at 3; TDS Comments at 4.

⁶ See, e.g., AMTA Comments at 15; AAR Comments at 3; APCO Comments at 3; GTE Comments at 4; MTT Comments at 5-6; Motorola Comments at appendix; Nextel Comments at 7-8; NYNEX Comments at 4; TDS Comments at 4-5. However, commenting parties differ on the appropriate classification of for-profit sale of excess capacity on private systems. See, e.g., Bell Atlantic Comments at 7 (including carriers selling excess capacity as for-profit); McCaw Comments at 15-16 (including carriers selling excess capacity as for-profit); Motorola Comments at appendix (designating excess capacity sales of internal systems as private mobile service); TDS Comments at 4-5 (treating excess capacity sales similarly to wholly for-profit offerings).

It follows that shared systems from which no licensee makes a profit should also be considered non-profit. See, e.g., ARINC Comments at 3; APCO Comments at 3; E.F. Johnson Comments at 6; ITA Comments at 5; Motorola Comments at appendix; Pacific and Nevada Bell Comments at 4; UTC Comments at 7-8.

competing in the marketplace for paying customers, even if offered by a predominantly non-profit entity, would be treated similarly.⁷

Publicly available service. A majority of commenters also concur with Telocator's position that services with few eligibility restrictions should be considered "effectively available to the public."⁸ This will ensure that mobile providers serving the same markets will be subject to the same regulatory structure. The record further supports eliminating system capacity as a relevant factor in the public availability determination so as to avoid negative incentives for the introduction of new spectrum efficient technologies.⁹

Interconnected service. With only a few limited exceptions, the entire mobile services industry supports

⁷ Presumably, the comments of the Utilities Telecommunications Council are intended to be consistent with this analysis. However, Telocator has reservations about the adequacy of UTC's proposal to allow sale of excess capacity by private entities subject to requirements that 51 percent of system capacity is used for internal needs and leased services are not used to meet loading requirements.

⁸ See, e.g., ARCH Comments at 5; Bell Atlantic Comments at 10-12; CTIA Comments at 10-11; MTT Comments at 8; NYNEX Comments at 10; SWBell Comments at 9-11; Sprint Comments at 7-8; US West Comments at 18-21; UTC Comments at 11.

⁹ See, e.g., ARCH Comments at 5; Bell Atlantic Comments at 11; CTIA Comments at 10-11; MTT Comments at 8; Pactel Corp. Comments at 11; PageNet Comments at 11; Sprint Comments at 8; UTC Comments at 11-12; Vanguard Comments at 7.

defining "interconnected service" to include direct or indirect access to the public switched network.¹⁰ This definition will best implement the policy that any service provider enabling subscribers to directly access the PSTN for the purpose of initiating or receiving messages be deemed "interconnected."¹¹ Moreover, it will both facilitate consistent regulation of competing services and assist in the preservation of mobile carriers' critical interconnection rights.

In addition, most commenters saw no reason to differentiate the definitions of public switched network and public switched telephone network.¹² There is no indication that Congress intended any other result, and use of the traditional definition is fully consistent with the regulatory parity and other goals of the Act. In contrast, any material changes in the definition would likely introduce unnecessary complications into the current proceeding.

¹⁰ See, e.g., AMTA Comments at 9; CTIA Comments at 8-9; GTE Comments at 6; NYDPS Comments at 5-6; Pacific and Nevada Bell Comments at 6; Sprint Comments at 5; ARCH Comments at 7-8; Pactel Paging Comments at 6.

¹¹ See Telocator Comments at 10.

¹² See, e.g., AMTA Comments at 9; Bellsouth Comments at 9-10; GTE Comments at 6; Motorola Comments at 7; McCaw Comments at 17-18; PageNet Comments at 10; SWBell Comments at 7. But see contra Sprint Comments at 7 (including wireless carriers); NYDPS Comments at 5-6 (including all wire and radio common carriers); Nextel Comments at 11 (urging inclusion of wireless carriers).

Functionally equivalent services. Finally, commenters generally support use of the "like services" test in determining what constitutes a functional equivalent for purposes of applying the private mobile service definition.¹³ Relying upon customer perception of service substitutability will ensure comparable treatment of comparable services.

B. There Is Broad Based Consensus on the Regulatory Treatment of All Mobile Services Except for Traditional SMRs

Industry comments generally support treating PCPs,¹⁴ RCCs,¹⁵ ESMRs¹⁶ and cellular services¹⁷ as commercial mobile services. The only substantial controversy involves the appropriate classification of traditional SMRs. Although

¹³ See, e.g., ARCH Comments at 6, CTIA Comments at 12-13; DCPSC Comments at 7; GTE Comments at 8; McCaw Comments at 19-22; MTT Comments at 9-10; NARUC Comments at 19-20; NYNEX Comments at 13; Pagemart Comments 9-10; TDS Comments at 10-11.

¹⁴ See, e.g., ARCH Comments at 8; Bell Atlantic Comments at 15; CTIA Comments at 15-19; DCPSC Comments at 8; MTT Comments at 7, NARUC Comments at 12-13; Pacific and Nevada Bell Comments at 11; PageNet Comments at 12-13; McCaw Comments at 28-31.

¹⁵ McCaw Comments at 28-31.

¹⁶ See, e.g., CTIA Comments at 15-19; GTE Comments at 8; ITA Comments at 6; NARUC Comments 12-13; NYNEX Comments at 15.

¹⁷ AMTA Comments at 14; ARCH Comments at 8-9; Bell Atlantic Comments at 14-17; CTIA Comments at 15-19; NARUC Comments at 12-13.

there was a general consensus that wide-area ESMRs should be classified as commercial mobile services, the commenters were divided over the status of small, traditional SMRs.¹⁸

Telocator noted in its opening comments that Congress had suggested that such systems might properly be deemed private.¹⁹ Telocator further explained that, because IMTS and traditional SMR services are direct competitors, they should be subject to the same regulatory obligations. Thus, however the Commission chooses to classify traditional SMRs, Telocator urges the agency to ensure that services competitive with those offerings, such as IMTS, are treated consistently for regulatory purposes.²⁰

Most importantly, numerous commenters explained that all paging services, whether deemed CMS or private, should be classified consistently.²¹ The record confirms that all paging systems now compete directly for essentially the same customers. The existing disparities in regulatory treatment of these services must be removed to permit paging to reach its full potential.

¹⁸ ARCH Comments at 8; Bell Atlantic Comments at 14-17; Motorola Comments at appendix; Nextel Comments at 14-16; TDS Comments at 13-14.

¹⁹ Telocator Comments at 12-13.

²⁰ Id. at 12-15.

²¹ See, e.g., ARCH Comments at 10; Telocator Comments at 15; TDS Comments at 14-15; Pactel Paging Comments at 7; McCaw Comments at 28.

C. All Mobile Services Should Enjoy Regulatory Flexibility

As Telocator and numerous other commenters have shown, the public will benefit if all CMS providers are granted regulatory flexibility to the maximum permissible extent.²² Allowing CMS providers to provide both private and commercial services will encourage the efficient use of scarce spectrum, provide incentives for the development of innovative services and efficient new technologies, and increase competition among service providers. For similar reasons, the FCC should clarify and confirm that CMS licensees may offer both enhanced services and dispatch services.²³ Not only are there no existing technical or policy justifications for any such limitations, equal treatment is compelled by Congress' and the Commission's regulatory parity goals.

²² See, e.g., Bell Atlantic Comments at 16-17; GTE Comments at 11-13; McCaw Comments at 12-14; Pactel Corp. Comments at 12-14; Pagemart Comments at 16-17.

²³ Bell Atlantic Comments at 17-20; Bellsouth Comments at 31-32; CTIA Comments at 23-24; Century Comments at 4-5; GTE Comments at 13-14; ICN Comments at 3-4; MCI Comments at 7; New Par Comments at 14-16; NYNEX Comments at 16; Pacific and Nevada Bell Comments at 11-13; PNC Comments at 3; RCA Comments at 4; TDS Comments at 16.

**D. The Record Supports Creating Narrowband
and Broadband Categories of Commercial
Mobile Service**

Telocator supports those commenters who suggest that CMS be divided into separate categories for narrowband and broadband services.²⁴ PCPs, RCCs, and new Narrowband PCS, which constitute like services, would be classified as narrowband CMS services. Similarly, ESMRs, cellular, and Broadband PCS would be considered as a group to be broadband CMS services. These classifications make sense from a marketplace perspective because they provide an objective measure for drawing appropriate distinctions between services based on market conditions and for grouping "like" services together.²⁵ Of course, the services within each category should be subject to the same regulatory rights and obligations as others in the category.

**E. All Mobile Services Should Enjoy Strong
Federally Protected Interconnection Rights**

The record overwhelmingly supports continuation of new CMS providers' co-carrier interconnection rights as guar-

²⁴ See Pactel Paging Comments at 7; NABER Comments at 3-5; Telocator Comments at 15; ARCH Comments at 10.

²⁵ See Telocator Comments at 15.

anteed under Part 22.²⁶ Moreover, paging and PCS merit strengthened interconnection rights whether classified as CMS or private. Such strong interconnection rights will, when governed by regulatory parity principles, allow for delivery of the widest variety of services at the lowest cost to the public.

II. FORBEARANCE FROM TITLE II REGULATION OF COMMERCIAL MOBILE SERVICES IS SUPPORTED BY THE RECORD

Virtually all commenters supported substantial forbearance from Title II regulation of CMS by the FCC.²⁷ Only resellers of mobile services and the California Public Utilities Commission discount the competitiveness of the mobile services market. The resellers contend that entry barriers resulting from spectrum limitations preclude facilities-based competition for cellular services. Consequently, they urge the Commission to require wholesale/retail pricing differentials and expanded interconnection rights to cellular switches to facilitate

²⁶ See, e.g., MCI Comments at 7; Motorola Comments at 20-21; Telocator Comments at 23; US West Comments at 30-32; Vanguard Comments at 18; NABER Comments at 17.

²⁷ See, e.g., AMTA Comments at 19-20; AMSC Comments at 5-6; ARCH Comments at 11; Bell Atlantic Comments at 21-27; BellSouth Comments at 26-31; Century Comments at 5; GTE Comments at 14-18; McCaw Comments at 7-11; Motorola Comments at 17-19; NTCA Comments at 5; New Par Comments at 8-11; Pactel Paging Comments at 11-12; Pagemart Comments at 11-16; RCA Comments at 7.

competition at the resale level.²⁸ California makes similar claims regarding the cellular market in that state and asserts that Title II requirements remain necessary to protect consumers.²⁹ Their claims are, however, manifestly contrary to the facts and have in large part already been rejected by the Commission.

The FCC has found that the mobile services market is highly competitive in virtually all respects.³⁰ As documented in Telocator's comments, as many as forty common carriers may operate in the 900 MHz band, with additional channels in other bands. In the two-way voice market, several facilities-based providers and resellers compete with each other. In each market, cellular carriers, cellular resellers, and ESMRs compete to provide mobile services to customers with mobile satellite services, wireless in-building services and cordless phones offering additional competition. New PCS and other wireless allocations will create even greater levels of facilities-based competition in the very near future. In addition, the FCC has determined that cellular carriers are already subject to effective

²⁸ NCRA Comments at 9-13.

²⁹ CAPUC Comments at 7-8.

³⁰ Notice ¶ 79.

competition from facilities-based as well as resale offerings.³¹

Immediate forbearance from tariff, TOCSIA and other forms of Title II regulations is, therefore, warranted based on this competitive showing. As the FCC has previously determined, tariff and related regulation in a competitive market is not only unnecessary, it is actually harmful to the public interest. Under these circumstances, tariff regulation would inhibit price competition, service innovation, entry into the market, and the ability of carriers to respond quickly to market trends to meet customers' needs.³² It would also impose onerous and costly administrative burdens on mobile service providers without any commensurate public benefit.

For similar reasons, the FCC should forbear from enforcing TOCSIA regulations. Because the problems TOCSIA was designed to solve have not occurred in the mobile services market, there is no need to burden providers with these obligations. Moreover, TRS contributions should not be required from paging services since these providers have already made their services available to speech and hearing handicapped customers.

³¹ Bundling of Cellular Customer Premises Equipment and Cellular Service, 7 FCC Rcd 4028, 4029 (1992).

³² Tariff Filing Requirements for Nondominant Common Carriers, FCC 93-401 ¶ 2 (Aug. 16, 1993).

**III. THE STANDARDS FOR REVIEWING STATE PETITIONS TO
EXTEND OR IMPOSE STATE REGULATION SHOULD
RECOGNIZE THE HIGHLY COMPETITIVE CONDITIONS IN
THE MOBILE SERVICES MARKETPLACE**

A few state regulatory interests have suggested standards for exercise of the FCC's preemption rights that would give the states' significant leeway to regulate mobile services.³³ For example, the DCPSC would permit a state to regulate CMS rates where it demonstrates that a CMS provider with market power is supplying exchange service to 15% of subscribers at rates higher than those of a landline carrier.³⁴ NARUC would eliminate the need to demonstrate market impact where CMS is a substitute for exchange service.³⁵ Both would place limits on parties' ability to seek relief from unnecessary state regulation.

However, new Section 332 creates a presumption that state rate and entry regulation is preempted.³⁶ Given the competitive nature of the industry and this clear statutory intent, there can be no justification for shifting the burden back to mobile service providers to demonstrate a lack of basis for regulation. States should instead be required to

³³ See DCPSC Comments at 13; NARUC Comments at 7-8.

³⁴ See DCPSC Comments at 12.

³⁵ See NARUC Comments at 5-7.

³⁶ 47 U.S.C. § 332 (1988).

carry a heavy burden in establishing the need for maintaining or instituting rate regulation,³⁷ and the FCC should caution state regulatory authorities against attempts to regulate rates indirectly through imposition of unreasonable terms and conditions on mobile offerings or other means. For the same reason, the FCC should establish expedited procedures for evaluating state petitions to continue rate regulation because regulation remains in effect during the pendency of the proceedings.³⁸

IV. CONCLUSION

The record strongly supports adoption of rules under new Section 332 that ensure regulatory parity among "like" mobile services; remove unnecessary federal and state regulatory requirements; guarantee strong interconnection rights; and provide the flexibility necessary for provision of the greatest number and variety of mobile services to the public.

³⁷ See, e.g., Bell Atlantic Comments at 41-43; CTIA Comments at 37-38; Century Comments at 8; GTE Comments at 24; McCaw Comments at 22-27; Motorola Comments at 20; NABER Comments at 17.

³⁸ See, e.g., Bell Atlantic Comments at 41-43; GTE Comments at 25; Motorola Comments at 20; Pactel Corp. Comments at 18-19.

Accordingly, Telocator urges the Commission to promulgate new mobile services regulations consistent with its opening comments.

Respectfully submitted,

TELOCATOR, THE PERSONAL
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November 23, 1993

APPENDIX

The following parties filed comments:

ADVANCED MOBILECOMM TECHNOLOGIES, INC. and DIGITAL SPREAD
SPECTRUM TECHNOLOGIES, INC. ("AMT/DSST")
AERONAUTICAL RADIO, INC. ("ARINC")
ALLCITY PAGING ("ALLCITY")
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC. ("AMTA")
AMERICAN PETROLEUM INSTITUTE ("API")
AMERITECH ("AMERITECH")
AMSC SUBSIDIARY CORPORATION ("AMSC")
ARCH COMMUNICATIONS GROUP, INC. ("ARCH")
ASSOCIATION OF AMERICAN RAILROADS ("AAR")
ASSOCIATION OF PUBLIC-SAFETY COMMUNICATIONS
OFFICIALS-INTERNATIONAL, INC. ("APCO")

THE BELL ATLANTIC COMPANIES ("Bell Atlantic")
BELLSOUTH ("Bellsouth")

THE PEOPLE OF THE STATE OF CALIFORNIA AND THE
PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA ("CAPUC")
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION ("CTIA")
CELLPAGE, INC., NETWORK USA, DENTON ENTERPRISES,
COPELAND COMMUNICATIONS & ELECTRONICS, INC. AND NATIONWIDE
PAGING ("Cellpage, et. al.")
CENCALL COMMUNICATIONS CORPORATION ("Cencall")
CENTURY CELLUNET, INC. ("Century")
COMCAST CORPORATION ("Comcast")
CORPORATE TECHNOLOGY PARTNERS ("CTP")
COX ENTERPRISES ("Cox")

DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION ("DCPSC")

E.F. JOHNSON COMPANY ("E.F. Johnson")

GENERAL COMMUNICATION, INC. ("GCI")
GEOTEK INDUSTRIES, INC. ("Geotek")
GTE SERVICE CORPORATION ("GTE")
GRAND BROADCASTING CORPORATION ("GBS")

HARDY & CAREY L.L.P. ("Hardy")

ILLINOIS VALLEY CELLULAR RSA 2 PARTNERSHIPS ("IL")
INDEPENDENT CELLULAR NETWORK, INC. ("ICN")
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC. ("ITA")
IN-FLIGHT PHONE CORPORATION ("IN-Flight")

LIBERTY CELLULAR, INC. ("Liberty")

LOWER COLORADO RIVER AUTHORITY ("CO")

MCCAW CELLULAR COMMUNICATIONS, INC. ("McCaw")

MCI ("MCI")

METRICOM, INC. ("Metricom")

MOBILE TELECOMMUNICATION TECHNOLOGIES CORP. ("MTT")

MOTOROLA ("Motorola")

MPX SYSTEMS ("MPX")

NATIONAL ASSOCIATION OF BUSINESS AND EDUCATION

RADIO ("NABER")

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

(NARUC")

NATIONAL CELLULAR RESELLERS ASSOCIATION ("NCRA")

NATIONAL TELEPHONE COOPERATIVE ASSOCIATION ("NTCA")

NEW PAR ("New Par")

NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE ("NYDPS")

NEXTEL COMMUNICATIONS, INC. ("Nextel")

NORTH PITTSBURGH TELEPHONE COMPANY ("North Pitts")

NYNEX CORPORATION ("NYNEX")

PACIFIC BELL AND NEVADA BELL ("Pacific and Nevada Bell")

PACIFIC TELECOM CELLULAR, INC. ("Pacific Telecom")

PACTEL CORPORATION ("Pactel Corp.")

PACTEL PAGING ("Pactel Paging")

PAGEMART, INC. ("Pagemart")

PAGING NETWORK, INC. ("PageNet")

PERSONAL RADIO STEERING GROUP, INC. ("PRSG")

PIONEER TELEPHONE COOPERATIVE, INC. ("Pioneer")

PN CELLULAR, INC. AND AFFILIATES ("PNC")

PTC CELLULAR ("PTC")

RAM MOBILE DATA USA LIMITED PARTNERSHIP ("RAM")

REED SMITH SHAW & MCCLAY ("Reed")

RIG TELEPHONES, INC. ("RIG")

ROAMER ONE, INC. ("Roamer")

ROCHESTER TELEPHONE CORPORATION ("RTC")

ROCKWELL INTERNATIONAL CORPORATION ("Rockwell")

RURAL CELLULAR ASSOCIATION ("RCA")

SOUTHWESTERN BELL CORPORATION ("SWBell")

SPRINT CORPORATION ("Sprint")

STARSYS GLOBAL POSITIONING, INC. ("Starsys")

TELEPHONE AND DATA SYSTEMS, INC. ("TDS")

TELOCATOR ("Telocator")

TIME WARNER TELECOMMUNICATIONS ("Time")

TRW INC. ("TRW")

UNITED STATES TELEPHONE ASSOCIATION ("USTA")

US WEST ("US West")

UTILITIES TELECOMMUNICATIONS COUNCIL ("UTC")

VANGUARD CELLULAR SYSTEMS, INC. ("Vanguard")

WATERWAY COMMUNICATIONS SYSTEM, INC. ("Waterway")

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November, 1993, I caused copies of the foregoing "Reply Comments of Telocator" to be mailed via first-class postage prepaid mail to the following:

Chief, Mobile Services Division *
Common Carrier Bureau
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Caroline McCabe

* Hand Delivered